

Supporting Statement for Application of Section 338 to Insurance Companies

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Final regulations under section 197 of the Internal Revenue Code (Code) that apply to a section 197 intangible resulting from an assumption reinsurance transaction, and under section 338 that apply to reserve increases after a deemed asset sale. The final regulations also provide guidance with respect to existing section 846(e) elections to use historical loss payment patterns. The final regulations apply to insurance companies.

2. USE OF DATA

The likely recordkeepers are business or other for-profit institutions.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Companies may attach statements (unsigned) to their income tax return for an open year.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The collection of information will not burden small businesses or other small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR PLOICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. COLLECTION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking, REG-146384-05 (71 F.R. 18053), was published simultaneously with temporary regulations, TD 9257 (71 F.R. 17990), which provided the public a 60-day period in which to review and provide public comments relating to any aspect of the regulation. No written comments were responding to the notice of proposed rulemaking were received. The final regulation was published in the Federal Register on April 10, 2006 (71 FR 17990).

In response to the Federal Register notice (74 F.R. 15057), dated April 2, 2009, we received no comments during the comment period regarding REG-146384-05.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Burden estimation:

The collection of information is in §§1.338-11(e)(2), 1.338(i)-1(c), 1.381(c)(22)-1(c) and 1.1060-1(a)(2) of the final regulations. The collection of information in these final regulations will allow an insurance company permission to cease using its historical loss payment pattern and to allow parties to a transaction under section 338, to an applicable asset acquisition under section 1060, or to a distribution or reorganization to which section 381 applies to file a retroactive election to apply these regulations to transactions completed before the effective dates of these regulations.

The total reporting burden is estimated to be 12 hours.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated April 2, 2009, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. This form is being submitted to update the current version with the new final regulations..

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTION TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

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